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FOCUS

The monthly newsletter of the Joint Center for Political Studies

Dr. Martin Luther King, Jr.: His Legacy Continues

Taking History to Court

Expert Witness Tells How to Collect Historical Evidence of Discriminatory Intent in Voting Rights Lawsuits

Voting Rights: The Fight Moves North

Black Political Activists Break New Ground as They Win Voting Rights Cases Outside of Dixie

POLITICAL TRENDLETTER

Perspective

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A Growing Black Vote: Dr. King's Legacy

Every January we celebrate the birth of Martin Luther King, Jr. In many different ways we pay tribute to his leadership, his vision, his courage, and to his commitment to use political power and public office to pursue justice and equality.

As we begin the long-awaited 1988 presidential election year, it is especially important to remember that Dr. King gave focus and leadership to our quest for political empowerment. He believed, as one historian wrote, that "racial compassion had to be reenforced by old fashioned American political *quid pro quo*." King himself once observed: "Our nettlesome task is to discover how to organize our strength into compelling power."

In every election, blacks must continue to organize and enhance their political strength in search of compelling power. The 1988 presidential election is no exception. In fact there are several reasons why we might see a major upsurge in black political participation in November.

The fact that this is Ronald Reagan's last year in the White House provides strong political motivation. The Reagan years have been especially hard for most blacks. The White House not only ceased to be a bulwark against racism, it actually tried to undo some previous civil rights gains. President Reagan cannot sing his swan song soon enough for most blacks.

Ironically, Mr. Reagan's final year in office helps to set the stage for black voters to exercise far more leverage in selecting the next president than their numbers might suggest. Two factors lead one to this conclusion: a popular incumbent president will not be seeking re-election, and it appears, even before the first primaries and caucuses are held, that no matter who gets the Republican and Democratic presidential nominations the election will be closely contested. In such elections the black vote can be pivotal, as it was in the elections of 1948, 1960, and 1976, which were decided by a small plurality.

In addition to wanting to drive a political stake in the heart of the "Reagan revolution," blacks also are focusing on the presidential election because Jesse Jackson is their overwhelming favorite, and because his candidacy is expected to motivate large numbers of blacks to register and vote.

Recent trends suggest that black voters are indeed continuing to mobilize their political strength. Twenty years ago the black voter registration rate was 9.2 percentage points below that of whites, and turnout was 11.5 percentage points below the white rate. In 1980 this gap started to close, and in 1984 black registration was only 3.3 points below white registration and black turnout was only 5.6 points below white turnout. This dramatic closing of the gap results from major increases in black voter participation while whites were recording only small gains. In 1980 and 1984 the average rates of increase in black registration and turnout were more than three times greater than the corresponding rates for whites.

Political empowerment in the American system of governance is a function of a number of complex factors, including voter participation, voter motivation and mobilization, electing responsive candidates, and removing barriers to participation. The task is indeed "nettlesome," as Dr. King warned, but this is a task we must face and accomplish—in 1988, to be sure, but in every election in the future as well. ■

Eddie N. Williams

PRESIDENT

FOCUS

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Dr. Martin Luther King, Jr.: His Legacy Continues

by Roger Witherspoon

Twenty years ago, an assassin's bullet ended the life of Dr. Martin Luther King, Jr., and marked the beginning of the end of one of the most tumultuous chapters in American history.

In terms of social and political disruption and realignment, no decade—except the decades encompassing the Civil War and the American Revolution—matches the impact of the 1960s in shaping American history.

At the center of this massive social and political fire storm was the young preacher from Atlanta, Dr. King, whose personal vision and drive helped forge a movement that forced the nation to confront an oppressive reality, a reality Dr. King knew it had to overcome to achieve the greatness it claimed to strive for. It is that vision and all-consuming dedication to freeing the nation from its inner divisions, constraints, and hypocrisies that earned Dr. King recognition as one of America's greatest citizens.

Dr. King's preeminence does not detract from the personal drive, sacrifice, and work of the black civil rights pioneers who preceded him or the contemporaries who teamed with him or organized their own regions. The major northern cities, for example, were integrated in the 1940s by local protests at downtown establishments, beginning with the sit-in of Chicago's James Farmer of the pacifist Fellowship of Reconciliation, which evolved into the Congress of Racial Equality (CORE). But those efforts produced local successes, not movement for national change.

Indeed, many of Dr. King's campaigns could not have succeeded without the efforts of the Student Nonviolent Coordinating Committee (SNCC), the NAACP, and many others. What set Dr. King apart, however, was his ability to pull these disparate groups and leaders to his side to work together on specific political campaigns. He built on the experiences of others to mold an ongoing movement that used nonviolence and faith in humanity and in the judicial system to win the day.

The Montgomery bus boycott, which propelled the young minister onto the national stage by 1957 is a case in point. The NAACP had been in Alabama since 1920, but was fragmented and had been active only in the courts. The Citizens Committee represented only a handful of black voters, as did E. D. Nixon's Progressive Democrats. The Women's Political Council, which demanded the boycott when Rosa Parks was arrested on December 1, 1955, for refusing to vacate her bus seat for a white man, did not have the power to galvanize other organizations to support its plan. The Women's Political Council thus turned to Nixon, who agreed to back a boycott. Nixon called a community meeting at Dexter Baptist Church with Dr. King who, although aligned with no organization, was respected by all. Dr. King's task was to hold these myriad groups together throughout the boycott and prove to all segments of a downtrodden black community that a concerted effort is stronger than individual philosophies or styles. His success in accomplishing that task stamped him as a force around which to mobilize a people.

His decision to institutionalize that experience by forming the Southern Christian Leadership Conference and, later, his decision to assist in the founding of SNCC, ensured the development of a movement that would transcend his persona and forever change the relationship between citizens and their government.

Dr. King's push for justice and equality went far beyond the struggle for "civil rights," however, and his efforts have served as a model for today's leaders. Dr. King realized that making his "dream" of equality come alive would also require a strategy that guaranteed all people the right to political and economic participation. Thus, he called for blacks to become more involved in the electoral process by voting and running for political office. And he organized economic boycotts, not only in the South, but in the North as well, in an attempt to address economic disparities.

In addition, he saw that America needed to alter those foreign policies that are based on supremacy. In this light, he was one of America's first leaders to call on U.S. officials to end all ties with the South African government and to support the imposition of international sanctions. He also appealed to the nation's leaders to end their involvement in the Vietnam War. Dr. King's attempt to bring about solutions to these domestic and international concerns was an integral part of his quest for world peace, and his goals are now a bench mark for black leaders.

His indelible legacy is that, as a result of a movement aimed at the conscience of the nation, no government policy--from war to commerce—would ever again be separated from its moral ramifications. ■

The author, an editorial writer for the *Dallas Times-Herald*, is the author of *Martin Luther King, Jr.... To the Mountaintop.*

Taking History to Court

Expert Witness Tells How to Collect Historical Evidence of Discriminatory Intent in Voting Rights Lawsuits

by Peyton McCrary

What at first seems a great burden can sometimes prove to be an unexpected boon. The intent standard—once viewed as a major barrier to the voting rights of minorities—is now providing an important new avenue to victory for black plaintiffs challenging the use of at-large elections in the South.

The Intent Standard: From Burden to Boon

When the U.S. Supreme Court handed down its landmark decision in *City of Mobile v. Bolden* in the spring of 1980, many observers thought it represented a crushing setback for the voting rights of minorities. In *Bolden,* the Court established a more difficult standard of proof than had previously been required for challenging electoral procedures, such as at-large elections, that dilute the votes of an ethnic minority. The Court agreed with the plaintiff's charge that it was impossible for blacks to elect a representative of their choice in Mobile's citywide election because the white majority voted as a bloc. However, the Court ruled that it was not sufficient to show that an at-large election system has a discriminatory *effect.* Under the standard established by the Court—the intent standard—plaintiffs were required to prove that the at-large election system was adopted or maintained for a racially discriminatory *purpose.*

When the case was tried again in 1981 (on remand to the federal district court in Mobile), the plaintiffs prevailed under the new intent standard as clearly as they had under the old effects test. I was the historian who was called on to piece together the complex electoral history of the city between the Reconstruction period and 1911, the year the city changed from a ward election system to an at-large system, and I found myself in uncharted territory. Nevertheless, with the help of two research assistants and after spending hundreds of hours reading statute books and newspapers, I uncovered evidence of discriminatory intent. In 1911, whites had indeed been concerned about black electoral influence under the ward election system, and this concern had prompted their decision to adopt at-large elections. (For a discussion of how evidence of discriminatory intent in voting rights cases is gathered, see box on page 5.)

One year later, the Congress amended Section 2 of the Voting Rights Act to make clear that it had sought to outlaw election practices that had a discriminatory effect, without requiring proof of discriminatory intent. The Congress was concerned about the amount of time and expense required to bring voting rights cases under the intent standard. The Congress also doubted that historical evidence, like that gathered in the second *Bolden* trial, was relevant to the constitutionality of present-day election procedures.

Nevertheless, although lawyers are no longer required to offer proof of discriminatory intent to win voter discrimination suits, they still often choose to present such evidence, for several reasons. First, lawyers want more than one arrow in their quiver; if they confront a judge with evidence of discriminatory intent along with evidence of discriminatory effect, they are more likely to win. Second, the statistical analysis needed to demonstrate that voting is racially polarized, which is necessary under the effects test, has become very expensive over the last five years. In contrast, research on discriminatory intent has become less expensive as experts have acquired more knowledge about the history of at-large elections. Third, proof of discriminatory intent often makes a profound impression on a court.

Finally, with the discriminatory intent standard, an entirely new type of lawsuit is now possible. Since it is relatively easy and inexpensive to gather evidence of discriminatory intent, it has become feasible to challenge election procedures statewide, rather than locally on a case-by-case basis. This can be especially advantageous in multi-jurisdictional cases in which the time and money required to gather evidence of racially polarized voting to prove discriminatory effect would be prohibitive. Discriminatory election procedures are being challenged statewide, for example, in Alabama, involving some 200 county commissions, school boards, and municipal governments (*Dillard v. Crenshaw County*), and in Virginia, involving the state's 145 school boards (*Irby v. Fitzhugh*).

"Smoking-Gun" Evidence in Alabama and Virginia

The case in which historical evidence of discriminatory intent has played the most crucial role is *Dillard v. Crenshaw County.* In 1985, black plaintiffs in Alabama challenged the use of at-large elections in

(Continued on page 5)

Peyton McCrary, the JCPS Distinguished Scholar for 1987-88, is a professor of history at the University of South Alabama. He frequently testifies as an expert history witness in voting rights cases in the South and is writing a book on the racially discriminatory uses of at-large elections.

January 1988

POLITICAL TRENDLETTER

Inside This Issue

- Jesse Jackson is the favorite among black Americans according to the JCPS/Gallup survey; other Democratic presidential candidates did not fare as well.
- The FBI's *Fruhmenschen* policy of investigating black officials without cause gives credence to the charge of harassment by the Bureau.
- Across the Nation, Clarence Mitchell convicted in Maryland; discriminatory voter registration laws struck down in Mississippi; New York tries postcard registration; election roundup.

On the Presidential Campaign Trail...

The long pre-season of the 1988 presidential race has finally come to an end. **The formal nomination process begins in February and will not be completed until the Democratic National Convention in Atlanta (July 18-21) and the Republican National Convention in New Orleans (August 15-18).** From now until August, the campaign will no longer be a popularity contest conducted through the media and public opinion polls but rather a battle for delegates won at the ballot box.

TL will follow the caucuses and primaries throughout the next five months, including the Iowa caucuses (Feb. 8), the New Hampshire primary (Feb. 16), and other early races as they unfold in South Dakota, Minnesota, Maine, and Wyoming. In all of these states, blacks comprise 1 percent or less of the total voting-age populations, but comprise significant proportions of selected precincts in key cities such as Davenport, Des Moines, and Waterloo in Iowa. Such precincts will be analyzed as our first indicator of black voter preferences in the delegate selection process. **The first real demonstration of black voting strength, however, will not occur until "Super Tuesday" (March 8) when 14 Deep South and Border states**—most with large black populations—and six non-southern states hold their caucuses or primaries.

As a lead-in to analyses in the coming months, *TL* presents a special thumbnail sketch of the seven Democrats currently seeking their party's presidential nomination. In February, we will provide a similar sketch of the Republican presidential nomination contenders. Analysis of black support is based on a JCPS/Gallup survey conducted in August 1987. The survey is the most recent and most comprehensive national sampling of black opinion on the presidential contenders. As expected, the poll revealed **JESSE JACKSON** to be the first choice among more than two-thirds of all blacks. **Descriptions of how each of the Democrats fared are presented below in alphabetical order.**

Democratic Candidates

BRUCE BABBITT: Former Arizona Gov. Babbitt is considered to be the dark horse in the race. Although he usually runs at the bottom in most surveys and has never risen above single digit support, recent polls in Iowa show Babbitt improving his position there. Babbitt, who calls himself the "honest one," says he will raise taxes to balance the budget while increasing spending on education and other social programs. Only if he does surprisingly well in the early primaries is he likely to remain in the race. Thus, Iowa and New Hampshire are especially important to his presidential ambitions. Coming from a state with a population that is only about 3 percent black, Babbitt has very low name recognition among blacks (only 15 percent of blacks said they had heard of Babbitt in August), and only 3 percent of black Democrats said Babbitt would be their first or second choice. If Babbitt comes in at least third in Iowa, his campaign would get a big shot of adrenalin.

MICHAEL DUKAKIS: Still running second or third in most national polls, Massachusetts Gov. Dukakis has based his candidacy on his ability to make things work in his state with its surging economic growth, its low unemployment rates, and its education and training program which transforms welfare mothers into working mothers. Dukakis faces the challenge of convincing voters that his administration would be as successful if he were president. His campaign strategy hinges heavily on winning big in neighboring New Hampshire, where he continues to lead in the polls. Massachusetts, like Arizona, is a state with a relatively small black population—4 percent of the state's total. In August, only 17 percent of blacks nationally said they had heard of Dukakis, and only 4 percent of black Democrats ranked him as their first or second choice for the nomination. Yet Dukakis, who is popular with black Bostonians, may very well have a good chance with black voters if he can make himself and his policies well known. Detroit **MAYOR COLEMAN YOUNG** has said that Dukakis may be a good choice for his endorsement. Dukakis has raised $8 million, far more than all other Democratic contenders, according to the October 1987 Federal Election Commission quarterly report. He can afford to hire a lot of campaign organizers and buy a lot of TV ads.

RICHARD GEPHARDT: A six-term Missouri congressman and Democratic Caucus chair in the House of Representatives, **Gephardt has been an announced candidate since February 1987, longer than any other Democrat in the race. Nevertheless, he is having a hard time improving his ranking in the polls. While he has recently polled well in Iowa, he has not been the front-runner or even the number two in any major national poll.** Political observers think that Gephardt must come in first or second in Iowa and/or do surprisingly well in New Hampshire or his days as a contender for the Democratic presidential nomination are numbered. Gephardt hails from a state with more blacks than Babbitt's Arizona or Dukakis's Massachusetts. Missouri's voting-age population is 7 percent black with large concentrations in St. Louis and Kansas City. **And with the endorsement of fellow Missouri Democrat and Congressional Black Caucus member ALAN WHEAT, Gephardt has the distinction of being the only contender other than Jesse Jackson, who has the support of a member of the CBC. Yet, Gephardt's name recognition among blacks in August was only 21 percent, and he was the preferred first and/or second choice of only 4 percent of black Democrats.**

ALBERT GORE, JR.: Tennessee Sen. Gore would obviously like to strike a spark in the southern states that vote on Super Tuesday. While Gore rates high among liberal groups, he is positioning himself to the right of the other Democratic contenders on defense, but is in step with them on domestic policy. Gore, like Babbitt, has remained near the bottom of the list in most national polls. **But there are indications that his popularity in the South has begun to take-off.** In an early October poll conducted by the Roper Organization for the *Atlanta Constitution and Journal*, Gore led Jackson among blacks in Tennessee. He also ran ahead of Jackson among the entire electorate in neighboring Kentucky and polled among the top three candidates in several other southern states.

Surprisingly, Gore does not have the support of fellow Tennessee Congressman HAROLD FORD. Memphis' only black Congressman recently added his name to the long list of CBC endorsers of Jackson. Still, Gore does seem to be gaining some support among southern black leaders. He may be the beneficiary of a dual endorsement strategy that some black leaders are pushing to endorse both Jackson and a white candidate. And recently, rumors surfaced that prominent black Alabama Democrats may give their endorsement to Gore outright. If such sentiment grows in Alabama and spreads to other southern states, it may very well end up causing Jackson some "southern discomfort" on Super Tuesday. By last August, however, only 20 percent of blacks nationally had heard of Gore, and he was the combined first and second choice of only 6 percent of black Democrats.

GARY HART: The strangest campaign of all has been the in-again-out-again campaign of former Colorado Sen. Hart. Hart, who came in second in the 1984 Democratic presidential nomination campaign, was front-runner in early national polling for the 1988 race until the scandal involving marital infidelity, judgment, and character forced him out of the race. Surprising almost all the political pundits, Hart reentered the race last November—just in time to qualify for the early caucuses and primaries. Hart continues to claim to be the candidate of "new ideas" for ending the nation's federal and trade deficits, producing more jobs, and implementing a better educational system. Having replaced Jackson as the front-runner in the most recent national polls, Hart has become the candidate most of the other Democratic contenders love to hate. **And he has been lumped with Jackson in the eyes of some pundits as unelectable, a label that will be difficult for Hart to overcome. In addition, recent charges of campaign financing irregularities may drain some of Hart's support.**

In 1984, Hart was anything but popular with blacks—winning only 3 percent of the black vote compared

to Mondale's 19 percent and Jackson's 77 percent. Since he was out of the race in August 1987, no polling of his name recognition or Democratic support was done in the JCPS/Gallup survey.

JESSE JACKSON: Rev. Jackson, who was also a candidate in 1984, was the Democratic front-runner in national polls for several months after Hart dropped out of the race. With Hart's reentry, however, Jackson has become second in most national polls. During the spring and summer of 1987, Jackson ranked near the top in several Iowa polls as well, but recently he has been coming in fourth or fifth in Iowa.

It is no surprise that **the former civil rights leader's name is recognized by 96 percent of blacks, and he is the preferred first or second choice of 78 percent of black Democrats.** And Jackson has the lion's share of support from black elected officials and political leaders, many of whom did not favor him in 1984. As previous editions of *TL* have pointed out, however, **there is a group of black leaders who remain non-aligned** (particularly southerners like **LIEUTENANT GOVERNOR DOUGLAS WILDER** in Virginia, Little Rock **MAYOR LOTTIE SHACKLEFORD,** and several of Atlanta's black leaders).

Jackson's chances for the nomination revolve around winning new white voters and securing an exceptionally high black voter turnout—especially on Super Tuesday. Yet sources close to the Jackson campaign fear that he has spent so much time trying to expand his base that he has failed to organize in black communities.

PAUL SIMON: When Illinois Sen. Simon entered the presidential race, few observers gave him even the slightest chance of winning. **But Simon has beaten the odds in recent national surveys by often running second or third. Saying he is "not a neo-anything," Simon unabashedly embraces traditional Democratic values.** Among blacks, who benefited politically and economically from the New Deal and its progressive updates in the Kennedy and Johnson years, Simon may very well find significant support. In August 1987, 40 percent of blacks nationally said they had heard of him, and he was the combined first and second choice of 14 percent of blacks. While this remains a small percentage of black support, it was second only to Jackson's total. Simon should be a strong contender for a good share of the 20 to 30 percent of black voters not committed to Jackson. Clearly, this would help him on Super Tuesday.

In sum, with the exception of Jesse Jackson, the Democratic contenders are not well known to most black Americans. But, undoubtedly, the next few months' pursuit of delegates will make at least the front-runners household names in the black community. **Whether any of the Democratic presidential candidates will be able to substantially challenge Jackson for black support is open to conjecture. It is also unclear how the votes of those blacks who are not supporting Jackson will be distributed among the other candidates.** The answers to these questions and other major campaign issues will be revealed as the primary season progresses.

A Smoking Gun in the BEO Harassment Issue

A former Federal Bureau of Investigation (FBI) undercover agent, HIRSCH FRIEDMAN, stated in a sworn affidavit in December 1987 that the FBI had an "unofficial" policy called *Fruhmenschen,* which consists of the "routine investigation without probable cause of prominent black elected and appointed officials in major metropolitan areas throughout the United States." *Fruhmenschen,* a derogatory term used to describe black people by the FBI, is a German word which means "early men." In the affidavit submitted in the ongoing court proceedings against Fulton **COUNTY COMMISSIONER A. REGINALD EAVES** for alleged bribery before a federal district court in Atlanta, Friedman said his understanding was that **the basis for such a policy was the assumption by the FBI that "black officials were intellectually and socially incapable of governing major governmental organizations and institutions."** Friedman, an attorney in private practice in Atlanta said in the affidavit that in the early 1980s, the Bureau told him to go after black officials identified by FBI code words: "blue eyes, green eyes, and brown eyes." According to Friedman's testimony, blue eyes referred to **ELDRIN BELL,** a top-ranking police official; green eyes referred to then **MAYOR MAYNARD JACKSON;** and brown eyes referred to A. Reginald Eaves, who is presently under indictment. Friedman added that "the investigation had targeted these particular individuals with the aim of prosecuting them if possible, although there was no probable cause to have started the investigation." **Friedman noted that during the same time period when black elected officials were being investigated, "over a dozen indictable cases against white elected and appointed officials in Georgia were dropped."** Friedman said that the ***Fruhmenschen*** policy was in effect during the entire three-year period that he worked for the FBI, beginning 1979, and remained in operation at the time his relationship with the bureau ended in 1982. Friedman's affidavit is being used by defense attorneys in a number of cases where black officials are being prosecuted, including the cases of Eaves and former state **SEN. CLARENCE MITCHELL** of Maryland (see "Maryland" story below). Further evidence of such a policy would clearly corroborate a growing number of claims by black elected officials that they have been treated unjustly by the Justice Department, of which the FBI is a component, and other law enforcement agencies.

Across the Nation

MARYLAND: The trials and tribulations of former state **SEN. CLARENCE MITCHELL III** continue. Earlier, he and his brother, state **SEN. MICHAEL MITCHELL,** had been convicted of accepting $50,000 to cloak a congressional probe of the scandal-scarred New York-based Wedtech Corp. They were appealing that conviction when **Clarence Mitchell was convicted on January 29 of conspiracy and obstructing a grand jury investigation of his business ties with convicted Baltimore drug dealer MELVIN (LITTLE MELVIN) WILLIAMS.**

Mitchell charges that he is a victim of a Reagan administration plot to discredit black elected officials. On hearing the verdict, Mitchell said, "I expected it. The prosecution intimidated our witnesses. They withheld evidence. This is round one. Round two is the appeal."

Neither of the Mitchell brothers has been sentenced yet. Clarence could be sentenced to a maximum of 10 years and Michael 15 in the Wedtech case and Clarence could receive up to 5 years and a fine of $250,000 for each count in the later conviction (see "Smoking Gun...." above).

MISSISSIPPI: Attorneys **FRANK PARKER** of the Lawyers' Committee for Civil Rights Under Law and **JUDITH REED** of the NAACP Legal Defense and Education Fund have racked up another victory for expanding voting rights. **JUDGE GLEN DAVIDSON'S ruling on November 16, 1987, in the case, *Operation PUSH v Allain*, was the first federal district court decision to strike down discriminatory dual location voter registration statutes and practices allowing county clerks to limit the times that registration can take place.** Mississippi's dual registration system requires citizens to register both at the county courthouse—to vote in federal, state, and county elections—and at city halls for local elections. The case also challenged Mississippi statutes which permit county clerks to restrict registration to only business hours during weekdays. This requirement has had a negative impact on many blacks who could not get time off from their jobs in order to register. Judge Davidson gave the governor and legislature of Mississippi 120 days to correct the defects he found in the statutes.

NEW YORK: With its relatively low voter registration among blacks and whites, **New York has come up with a new way to intensify its campaign to add to the voter registration rolls.** Encouraged by **MAYOR ED KOCH** and non-partisan voter registration organizations, New York Senators **DANIEL MOYNIHAN (D) and ALFONSE D'AMATO (R) have agreed to use their congressional postage franking privileges for mass mailings to encourage two million of the Big Apple's citizens to register to vote** by February 19. The 19th is the registration deadline for citizens to be eligible to vote in the state's April 19 presidential primary. If the drive is successful, some voter registration activists such as **LINDA DAVIDOFF,** director of Human SERVE, believe it could become a national model for enfranchising big-city voters who have never bothered to register. As the plan's centerpiece, Moynihan and D'Amato are to use their frank to send two postage-paid forms, in English and Spanish, to every city household. Citizens eligible to vote need only fill out the forms and drop them in the nearest mail box.

NORTH CAROLINA: With an overwhelming black voter turnout, **city council member ED CARTER upset white incumbent LES GARNER, who was seeking his second two-year term in November, to become Greenville's first black mayor in the twentieth century.** A two-term council member and one-time mayor pro tem, Carter defeated Garner by fewer than 300 votes.

In other news, although black incumbent **MAYOR HARVEY GANTT** lost his reelection bid, **ELLA SCARBOROUGH made history in Charlotte in the November election by winning the third district seat on the city council** and thus becoming the city's first black elected female council member. Scarborough is presently employed by the Duke Power Co. as a librarian.

OHIO: In November 1987, JUDGE NADINE ALLEN, a Democrat, became the first black person to be elected to a contested countywide office in predominantly white, Republican Hamilton County (Cincinnati). She carried white and black, poor and rich, suburban and inner-city neighborhoods in her successful campaign to win a seat on the Hamilton County Municipal Court. Overall, Allen received 58 percent of the votes cast in her judicial race—and more votes than any other candidate in the three county-wide judicial races on the ballot. Allen first ran for the municipal court in 1984 and was defeated. She was later appointed to the post by Gov. **RICHARD CELESTE** in January 1985 but lost the election the following November by a narrow margin. Gov. Celeste appointed her again in April 1987. **Allen's third try for election came in the midst of a civil rights lawsuit by black Ohio state REP. WILLIAM MALLORY (D-Cincinnati) and others challenging the system of electing municipal judges in Hamilton County.** Citing the failure by blacks to win any judicial elections in Hamilton County the suit seeks a court-ordered change to a district system that would ensure the election of some blacks to the bench. Running against Allen were black Republican **VICKIE WHITFIELD** and white Independent **DANIEL BREYER.**

The Democratic and Republican parties had each agreed to run black candidates in the election because no black had ever won a county-wide judicial seat in a race against a white opponent. Thus, it was a race that was supposed to ensure the election of Hamilton County's first black judge. In the end, Breyer got 24 percent of the vote and Whitfield 21 percent. Seventy-two percent of the county is white and 28 percent is black. How the race will affect the ultimate outcome of Rep. Mallory's lawsuit is unclear at this time. Nationally, blacks account for fewer than 4 percent of all judges, and black women comprise fewer than 1 percent.

VIRGINIA: Portsmouth's first black mayor, JAMES HOLLEY, was ousted from office in a recall election last December 15. Holley, a dentist and longtime civil rights activist, had been accused of sending hate mail to community leaders (including six blacks) who opposed Holley's order to close a predominantly black high school. In the recall election, 58 percent of voters favored removing Holley from office while 42 percent supported him. Holley, who denies sending the hate mail, has not ruled out running for office again, perhaps as early as the city council elections in May.

In November, **WILLIAM NEWMAN** became Arlington county's first black board member since Reconstruction. He is also the first representative on the five member board in decades who hails from the southern part of the county, which is generally less affluent than the northern part. Blacks compose about 9 percent of the total population in Arlington County, which elects its board members on an at-large basis.

Taking History to Court

(Continued from page 4)

nine counties, relying primarily on expert testimony from historians concerning discriminatory intent. I testified before federal judge Myron Thompson in Montgomery on the state's policy of using at-large elections, "anti-single- shot" laws, and a statewide "numbered-place" requirement for the explicit purpose of preventing black electoral representation. The evidence I presented was the "smoking-gun" variety about which lawyers dream.

The most dramatic part of the evidence concerned barriers that the state had erected to preclude single-shot voting. Single-shot voting works this way: if four city council seats are to be filled in an at-large election and one of the candidates is black, blacks have a better chance of electing that person by voting for him or her only, instead of voting for all four candidates. Single-shot voting can be prevented, however, if a law is passed that disqualifies ballots on which votes have been cast for less than the full slate.

In 1951, Representative Sam Engelhardt, a white planter in black-majority Macon County, persuaded the Alabama legislature to pass such a full-slate law for all municipalities in the state. One of his fellow legislators explained that the full-slate law was adopted because "there are some who fear that the colored voters might be able to elect one of their own race to the [Tuskegee] city council by 'single-shot' voting."

In 1961, in an effort to head off future challenges, the Alabama legislature repealed Engelhardt's anti-single-shot measure and replaced it with a new statute, one less likely to attract court scrutiny, that requires numbered places to be used in all elections for local governing or legislative seats when more than one office is to be filled. In other words, candidates are required to qualify for a specific place (seat number 1, seat number 2, etc.), and voters must vote for one candidate for each place. This law is still in effect and precludes the possibility of single-shot voting.

The discriminatory purpose of this esoteric election procedure was made clear in a revealing speech that I found buried in the state archives. In January 1962, party official Frank Mizell of Montgomery had explained to the State Democratic Executive Committee why the legislature had enacted the numbered-place requirement: "Now as you all know, the law against single-shot votes has been repealed." As a result, said Mizell,

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Gathering Evidence of Discriminatory Intent

Historians have served as expert witnesses on the issue of discriminatory intent in at least 25 separate cases since 1980, and their testimony has usually led to the adoption of single-member district plans. The research necessary for proving discriminatory intent, once seen as so time-consuming, expensive, and futile, now seems routine and productive. As a frequent witness in cases in which discriminatory intent was alleged, I have developed a standard methodology for conducting research on the adoption and maintenance of at-large elections and other procedures that are used to prevent black electoral representation. Because this type of research is familiar to few historians or political scientists, I will explain my methods here.

The first step is to search the state codes and session laws for legislation affecting the method of electing members to local governing bodies such as city councils, county commissions, or school boards. Usually such local laws were adopted under the local courtesy rule, by which the legislature defers to the wishes of the county delegation. Occasionally, the legislature may adopt statewide laws requiring all local governing bodies to be elected at-large, by a majority vote, or under a numbered-place system. In some cases, an appointive procedure is adopted (or eliminated). Every instance of change in the method of choosing public officials offers a point of departure for research on the question of intent.

The researcher then reads the local newspaper coverage of the decision-making process, examines election returns before and after the change, searches for reports of consulting firms hired to examine the proposed change, and looks at official minutes. Sometimes transcripts of interviews and depositions prove useful. Historians, who are often called on to do the research and to testify in these cases, are trained to evaluate such documentary evidence and the circumstances behind governmental and political decisions.

Sometimes evidence of discriminatory intent is uncovered but no "smoking gun" is found. However, if circumstantial evidence clearly shows that legislators intentionally adopted a different type of electoral system with the knowledge that it would dilute the votes of the black minority, then no smoking gun is required. In such cases, historical testimony can be crucial in evaluating what the courts call "the totality of circumstances" behind the adoption or maintenance of at-large elections. Sometimes, of course, even after much conscientious research, no evidence of discriminatory intent is found. In several instances in which I have concluded that there was no evidence of discriminatory intent, the lawyer who engaged my services did not put me on the stand. The attorneys with whom I have worked know that only a witness who testifies honestly about the evidence can convince the judge of the validity of that evidence.

Voting Rights: The Fight Moves North

Black Political Activists Break New Ground as They Win Voting Rights Cases Outside of Dixie

by Sandra Featherman

When the Voting Rights Act (VRA) was passed in 1965, it applied principally to states and local jurisdictions in the South. The Act outlawed some of the most blatantly discriminatory electoral tactics, such as poll taxes and literacy tests, which southern jurisdictions used at that time to prevent black and black-supported candidates from winning office. Thus, the vast majority of voter discrimination lawsuits were filed in the South.

More recent developments, however—namely the 1982 amendments to the Act and the increasing influence of blacks in politics—have extended the scope of the VRA. Consequently, the locus of voter discrimination lawsuits is shifting. Now, blacks in the North are challenging the constitutionality of electoral procedures, particularly at-large elections. In suburban Philadelphia, Pittsburgh, and Springfield, Illinois, civil rights groups have gone to court challenging at-large electoral systems on the grounds that they discriminate against black voters.

Challenges Move North

In 1982, Congress extended coverage of the VRA beyond the boundaries of the South to all jurisdictions in the country. The Act was amended in other ways as well. Congress attempted to settle the controversy over the standard of proof required in voting rights challenges by making it clear that plaintiffs need only to prove that electoral systems have a discriminatory effect; they do not have to prove that an electoral system was intentionally designed to reduce opportunities for blacks to elect representatives of their choice. (See "Taking History to Court," page 4.)

This was an important breakthrough for challenging electoral systems in the North. In that region, more subtle voter discrimination tactics, such as at-large elections, are frequently used. (Another subtle tactic is gerrymandering, the intentional grouping of electoral districts to reduce a group's voting effectiveness.) It is often difficult to prove that these types of electoral systems were intentionally designed to dilute the black vote.

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In 1986, the Supreme Court, in *Thornburg vs. Gingles,* reaffirmed the effects standard by striking down multi-member legislative districts in North Carolina because they diluted the black vote. In addition, the Supreme Court laid out guidelines for what constitutes discriminatory election results. The Court ruled that voter discrimination occurs when, even though a minority group has enough members in the population to elect a representative of its choice, the electoral system effectively denies them the opportunity to do so. (In the Court's decision, Justice William Brennan cited an article written by civil rights attorney Frank Parker while he was a distinguished scholar at the Joint Center, in the JCPS publication *Minority Vote Dilution.*)

Another reason more electoral system challenges are being brought in the North is that blacks have become more active politically, particularly in terms of registering and turning out to vote. This has led to widespread concern about the discrepancy between the numbers of blacks in the polity and the paucity of black elected officials in the North, something that seems to be most prevalent in jurisdictions that hold at-large elections. The effects of at-large electoral systems were harder to discern and confront when blacks were not heavily registered to vote and their turnout was low. But as their power at the polls grew, this discrepancy became more obvious. Today, guaranteeing that structural impediments to equal participation do not affect the black vote is sharing the attention of black political activists along with voter mobilization efforts.

This is an important issue, since a majority of American cities hold at-large elections. The International City Management Association's survey, "Form of Government—1986," indicated that 60.4 percent of cities with populations over 2,500 hold at-large elections, and 27 percent have mixed (at-large and district) electoral systems. At-large electoral systems are most pervasive in the West and Northeast. The number of cities using such systems dropped, however, by more than 6 percentage points between 1981 and 1986. This may have been due, at least partially, to efforts by civil rights activists. Only 12.8 percent of the cities surveyed elect their officials by district or ward.

The broadening of the scope of the VRA and subsequent court interpretations opened the courtroom doors for blacks to legally challenge at-large elections in the North, but it was their growing political aspirations

that led them over the threshold. Descriptions of some recent court challenges in northern cities follow.

The VRA in Action

Blacks are 20 percent of West Chester, Pennsylvania's, 17,500 residents, but black candidates rarely win any of the seven borough council seats. The borough changed from ward to at-large elections in 1892, to reduce the likelihood of blacks getting elected to the council. Under the ward electoral system, five blacks served successively on the council in the 10 years from 1882 to 1892. In contrast, for 81 years following the change to at-large elections, no blacks were elected to the council. In 1968, Fred Beckett was appointed to the council but lost the election in which he ran to retain his seat. Robert T. Butler was appointed in 1973 and elected later that year to a full term, and a black woman, Ann E. Aerie, was elected in 1985. Both were significant firsts.

In 1985, the United Political Action Committee (UPAC), a small group of black professionals active in civil rights causes, filed a suit against West Chester Borough in the Chester County Court of Common Pleas. The plaintiffs claimed that the at-large electoral system diluted the black vote, and "effectively denied the black citizens elected and appointed leadership." Litigants testified that if the borough were divided into seven single-member districts, blacks would be a majority of the voters in at least one district (the east central) and would be an important electoral force in a northwest district, where blacks make up approximately one-third of the population.

Blacks in the North are beginning to challenge the constitutionality of electoral procedures, particularly at-large elections.

Despite numerous newspaper articles which had documented West Chester blacks' repeated efforts over the years to get elected to the council, white opponents suggested to the court that blacks were not discriminated against by the at-large system. They contended that blacks were not elected to the council because they either did not vote cohesively, were not interested in running, or did not work as hard as whites to get elected.

In fact, the record was quite clear that blacks who had run for council in black-majority precincts had generally led their party tickets in primary elections, often garnering several times the number of votes gained by white candidates. Nevertheless, black candidates had usually trailed in white precincts, which prevented them from winning elections.

In October 1987, Senior Judge John E. Stively, Jr., declared that West Chester's at-large electoral system was unconstitutional. He ordered the borough to implement a seven ward system, modeled on the designs submitted by UPAC.

Pennsylvania is the locus of other challenges as well. A coalition of civil rights activists filed a federal suit in January 1986 against the city of Pittsburgh, complaining that the at-large electoral system unfairly prevented blacks, who comprise one-fourth of Pittsburgh's residents, from winning council seats.

It would be much more efficient to mount statewide efforts to change state constitutions and legislative acts that mandate or allow at-large elections for local jurisdictions.

However, while the case was pending last May, Pittsburgh voters approved a new district electoral system, which is expected to contain at least two districts where blacks will be in the majority. Although the change was approved citywide by a 2-to-1 ratio, in black areas it was supported by as much as 12 to 1. The new districting plan will be implemented this year.

Civil rights groups have also successfully challenged at-large electoral systems in Illinois. In Springfield, the state capital, a U.S. district court ruled in January 1987 that the at-large electoral system there violated the federal Voting Rights Act. Blacks had charged that the electoral system diluted their voting strength and was inherently discriminatory. The system was changed to election by ward, and in November 1987, two black men, Frank McNeil and Allan Woodson, were elected to the town council.

In Danville, Illinois, where the at-large electoral system was also successfully challenged, two blacks recently won seats on the city council for the first time in 60 years: Lester Brown, an accountant, and Eugene Thompson, a retired foundry worker and one of the plaintiffs in the voter discrimination lawsuit that led to the new ward electoral system. As a result of these decisions, a number of similar challenges have been initiated in courts in other jurisdictions in Illinois.

The 1982 amendments to the Voting Rights Act and the 1986 Gingles decision have made it easier to strike down at-large election systems in the North. Bringing suits against every individual jurisdiction that uses at-large elections, however, will be a time-consuming and ponderous task. It would be much more efficient to mount statewide efforts to change state constitutions and legislative acts that mandate or allow at-large elections for local jurisdictions. If at-large elections are removed as options at the state level, blacks will achieve voting equity more quickly. ■

Taking History to Court

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"a group of people who want to vote as a bloc [could use single- shot voting] to put a scallowag [sic] or put a Negro in there. . . We have a concerted desire and a campaign [from officials in Washington] to register Negroes en masse. It has occurred to a great many people, including the legislature of Alabama, that to protect the white people of Alabama, that [sic] there should be numbered places."

As a result of this evidence, Judge Thompson issued a preliminary injunction prohibiting further use of at-large elections, and all nine counties agreed to adopt single-member district plans. Subsequently, the plaintiffs moved to add as defendants municipalities and school boards for which at-large elections continued to have a discriminatory effect. Most of the defendents have agreed to adopt district elections.

Smoking-gun evidence is also the linchpin of a statewide lawsuit in Virginia, *Irby v. Fitzhugh*. In October 1987, black plaintiffs challenged the statewide system that required school board members to be appointed rather than elected. In this case, evidence of discriminatory intent was easy to find. It was right there in the proceedings of the 1902 state constitutional convention.

A committee of the convention proposed changing the existing method of appointing school board members to a system of popular elections where upon several delegates explained the dangers of such a switch. "We would not only be liable, but likely, to have Negro school trustees in a good many districts in the state, if the trustees are to be elected by the people," said one delegate. "I think we certainly ought not to vote to elect them. . until the franchise matter is disposed of." Another agreed with this prediction, and added that such a prospect would be "abhorrent."

Decades later, in 1947, the Virginia legislature agreed to allow Arlington County to elect its school board members. In 1956, however, two weeks after the elected school board voted not to appeal a court-ordered school desegregation plan, a rural legislator introduced a bill to return the county to the appointive system. His reason was that "the Arlington School Board had adopted certain educational procedures that are repulsive to the conceptions of a great many of the good people of the county." He and three dozen co-sponsors stated explicitly that the elected board needed to be abolished because of its willingness to acquiesce in school integration. The county board of supervisors, controlled at the time by hard-core segregationists, was authorized to appoint all future school board members. Over the years, legislators from Northern Virginia have repeatedly introduced legislation that would reinstate popular elections for their county school boards, but all of the bills have died in committee.

Although *Irby* is still in litigation, the plaintiffs seem likely to prevail. If they do, this could mean that election plans from Virginia's 145 school boards would have to be submitted to the U.S. Department of Justice for preclearance, and many of the jurisdictions would then be required to change to elected boards. Conservatives may come to rue the day they championed the intent standard as a barrier to district elections. History is now on the side of the challengers. ■

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